IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 1810 OF 2005

Shri. Subhash Digambar Thombare ...Applicant

Versus

The State of Maharashtra ...Respondent

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Mr. Manoj Bhatt, Advocate for the Applicant
Ms. S.V. Gajare, A.P.P. for State.

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CORAM: SMT. V.K. TAHILRAMANI, J.

DATED OF RESERVING THE ORDER : 30TH JUNE, 2005

DATE OF PRONOUNCING THE ORDER : 11TH JULY, 2005

P. C.:-

1. Heard both sides.

2. Through this application the applicant is praying for quashing of F.I.R. registered against him at Thane Nagar Police Station on 12.1.2005 at the instance of complainant Dharmesh Shah. The said case is C.R. I-16/2005 and it is under Section 385 of I.P.C.

3. The facts pertaining to this case are that the complainant Dharmesh Shah is residing at Jambhli Naka, Thane. In the year 1999-2000, he wanted to renovate his shop, hence, he demolished the earlier shop and started new construction. Next to his shop

there was a public urinal, as a number of persons complained about the said urinal to the Municipal Corporation, the Municipal Corporation demolished the same. The present applicant asked the complainant as to why he demolished the public urinal and the complainant should rebuild the same or give Rs.2,00,000/- to the applicant. Thereupon, the complainant informed the applicant that he had not demolished the public urinal and the applicant may take any steps as he likes.

4. On account of the monsoon the complainant erected weather shed for protection. In November, 2004 around the time of Diwali, the applicant lodged a complaint in respect of weather shed to the Municipal Corporation and the weather shed came to be demolished. Thereafter, on 12.12.2004 at about 2.00 p.m. when the complainant was on his way home to have lunch, the applicant came near the complainant and told him that if the complainant wants to stop the demolition of weather shed the complainant should pay Rs.20,000/- to the applicant. However, the complainant did not reply and went away. Thereafter, the applicant used to telephone the complainant frequently and on telephone he gave threats and made demand for money. From November, 2004 to December, 2004 the applicant used to call the complainant on telephone and give him threats and demanded

Rs.20,000/- if he wanted to stop the demolition of the weather shed of the complainant. On account of this, the complainant lodged his report at the police station stating all the above facts, i.e. the applicant used to telephone him, threaten him and demand money.

5. The learned advocate for the applicant has placed reliance on para 60 of the decision of the Supreme Court in the case of **R.S. Nayak Vs. A.R. Antulay and Anr. reported in (1986) 2 SCC 716.** The observations in the said para are thus :-

> "Before a person can be said to put any person in fear of any injury to that person, it must appear that he has held out some threat to do or omit to do what he is legally bound to do in future. If all that a man does is to promise to do a thing which he is not legally bound to do and says that if money is not paid to him he would not do that thing, such act would not amount to an offence of extortion."

6. Mr. Bhatt has submitted that in view of these observations the Supreme Court held that there was no justification in the claim that a charge for the offence of extortion should have been framed. However, it is pertinent to note that the said

conclusion is based on the earlier observations in the said para wherein it is observed that there is no evidence at all in the case that the managements of the sugar co-operative had been put in any fear and the contributions had been paid in response to threats. Merely because the respondent was Chief Minister at the relevant time and the sugar co-operative had some of their grievances pending consideration before the government and pressure was brought about to make the donations promising consideration of such grievances, possibly by way of reciprocity, the Supreme Court observed that they did not think the appellant is justified in his contention that the ingredients of the offence of extortion have been made out.

7. The facts in the case on which reliance is placed and the facts in the present case are entirely different, hence, the decision cannot be made applicable to the facts of the present case. Moreover, the present case is not a case of extortion but it is a case of an attempt to commit extortion. In the present case the complainant has been put in fear of injury by the applicant. He has held out threats to the complainant and he told the complainant that if Rs.20,000/- is paid to him, he will stop the demolition of the weather shed. Looking to the averments in the complaint, in my

view, the offence under Section 385 of I.P.C. is clearly made out.

8. Thereafter, reliance has been placed on the decision in the case of **Habibul Razak Vs. King Emperor, 1924 Allahabad 197**. In the said case it is observed thus:-

> "Before a person can be said to put any person into fear of any injury to that person, it must appear that he has held out some threat to do or to omit to do what he is legally bound to do in the future. On the other hand if all that a man does is to promise to do a thing which he is not legally bound to do and says if money is not paid to him he would not do that thing, such an act does not amount to an offence."

. However, in the very same judgment, thereafter, it has been observed as under:-

> " But a threat held out by the accused that he would not release the cattle belonging to complainant and taken away by the accused without his consent, unless he was paid some money for their release, does amount to extortion inasmuch as he did put him in fear

> of injury to his property, namely the cattle, as he must have felt that his cattle would remain with the accused so long as the money was not paid to him. This would be sufficient injury within the meaning of S.44 of the Indian Penal Code."

9. Mr. Bhatt, the learned advocate for the applicant has lastly submitted that the applicant was not working in the Corporation and hence, he had nothing to do with the demolition or otherwise of the weather shed by the complainant and hence, it cannot be said that he was legally bound to do something or omit to do something in relation to weather shed. In this connection it is to be noted that in November 2004 the applicant had made a complaint to the Corporation in respect of weather shed of the complainant and on the basis of this complaint, the weather shed came to be demolished. Thereafter, the applicant had approached the complainant stating that if the complainant paid Rs.20,000/- to him he would stop the action of demolition of weather shed. This fact is clearly stated in the complaint. Moreover, it is also stated in the complaint that the applicant threatened the complainant and demanded Rs.20,000/- for stopping the demolition work of weather shed. On reading the complaint, in my view, the offence under section 385 of I.P.C. is made out against the

applicant, hence, no case is made out for quashing the F.I.R. Application is rejected.

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